



**Charles R. Lucy**  
**Of Counsel**  
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January 4, 2019

**VIA E-MAIL AND U.S. MAIL**

AFLOA/JACL  
1500 West Perimeter Road, Ste 1370  
Joint Base Andrews, MD 20762

**Re: FOIA Appeals 2017-00131-A and 2016-02507-F (Joseph L. Bunecke, Lt. Col., USAF, Ret'd)**

Dear Sir/Ma'am:

I represent Lt. Col. Joseph L. Bunecke, USAF, Ret'd regarding subject FOIA appeals. At the suggestion of the USAFA FOIA Requester Service Center (Atch 1) I am writing to you to request the status of these appeals and to insure the completeness of the file forwarded by USAFA in support of the appeals.

Specifically, I am requesting confirmation that your office received my November 27, 2017 letter to the USAFA FOIA Office supplementing Lt. Col. Bunecke's appeal in case number 2016-02507-F (Atch 2). Attached to that letter were several pieces of correspondence including a letter from the Air Force Academy Superintendent, Lt. Gen. Michelle Johnson, dated 5 Aug 2014, two letters from the Air Force Academy Board of Visitors Chair, Mr. Alfredo Sandoval, dated April 2014 and 2 June 2014, a letter from Protect Our Defenders dated April 4, 2014 and signed by Ms. Nancy Parrish as President, and finally a document marked as "Attachment 3: Specific Replies to Assertions in Protect our Defenders (POD) Letter (4 Apr 2014)". The reference to "Attachment 3" indicates that other documents were missing from the documents provided to POD.

The point of all of these documents, which were provided to Lt. Col. Bunecke by POD and omitted from the USAFA FOIA production, was to illustrate that the USAFA FOIA response was incomplete at best and dishonest at worst. As pointed out in my November 27, 2017 letter, and based on the numerous FOIA requests from Lt. Col. Bunecke and others regarding the handling of sexual assaults at the Air Force Academy, there is no way that these documents could have been "overlooked" in the processing of Lt. Col. Bunecke's FOIA requests and appeals. Such an oversight begs the question of how many additional documents have not yet been provided to Lt. Col Buecke by USAFA that are responsive to his requests.

Based on the above, I respectfully request on behalf of Lt. Col. Bunecke that you review his appeal files and the documentation supplied by the Air Force Academy for completeness. If you



January 4, 2019  
Page 2

discover any omissions, please let me know and I will immediately supply the missing documentation to you if it is in my possession. As you can tell from the age of the correspondence in this case, Lt. Col. Bunecke has been patiently waiting for a very long time to receive a complete file of the documents he is requesting. Your prompt response to this request, including a status update and your file numbers for these cases (since we have not yet received an acknowledgement of our appeals) will be appreciated.

Very truly yours,

A handwritten signature in blue ink that reads "Charles R. Lucy".

Charles R. Lucy  
Of Counsel

CRL  
Enclosures  
cc: Joseph L. Bunecke

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**ATCH 1**



**DEPARTMENT OF THE AIR FORCE**  
**HEADQUARTERS UNITED STATES AIR FORCE ACADEMY**

12 December 2018

USAF FOIA Requester Service Center  
2304 Cade Drive, Suite 3700  
USAF Academy CO 80840-5001

Mr. Charles Lucy  
c/o Holland & Hart, LLP  
90 S. Cascade Ave, Suite 1000  
Colorado Springs, CO 80903

Letter of Referral for Appeal (2017-00131-A Bunecke)

Your 22 June 2017 FOIA Appeal, our number 2017-00131-A was referred to the Air Force Appellate Authority on 12 December 2018. They will respond to you directly with the final decision. You may contact them at the address below if you have further questions or concerns.

AFLOA/JACL  
1500 W. Perimeter Rd., Ste 1370  
Joint Base Andrews, MD 20762  
240-612-4700

X   
\_\_\_\_\_  
CHARLES M. SPRINGS  
Chief, FOIA Manager

**ATCH 2**

## Charles Lucy

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**From:** Charles Lucy  
**Sent:** Monday, November 27, 2017 4:42 PM  
**To:** usafa.foia@us.af.mil  
**Cc:** TOLIN, JOSHUA A Capt USAF USAFA USAFA JA/JA; MCLAUTHLIN, SCOTT B GS-13 USAF USAFA USAFA/JA  
**Subject:** FW: Bunecke FOIA Appeal and Follow Up (11\_27\_17).DOCX  
**Attachments:** Bunecke FOIA Appeal and Follow Up.pdf

Dear Mr. Springs:

Further to my email of November 20, 2017, please add the attached to Lt. Col. Bunecke's FOIA appeal dated June 22, 2017.

Sincerely,

Charles R. Lucy  
Of Counsel  
(719) 475-6447  
[clucy@hollandhart.com](mailto:clucy@hollandhart.com)



**CONFIDENTIALITY NOTICE:** This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you



**Charles R. Lucy**  
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Phone (303) 295-8308  
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November 27, 2017

**VIA EMAIL AND US MAIL**

USAFA FOIA Office  
Attn: Mr. Charles M. Springs  
2304 Cadet Drive, Suite 3700  
USAF Academy, CO 80840-5001

**Re: FOIA Appeal, Mr. Joseph L. Bunecke – Case No. 2016-02507-F**

Dear Mr. Springs:

I am writing to follow up on subject FOIA appeal submitted on June 22, 2017 and acknowledged by you on July 26, 2017. To date, I have not received a response or even an update to my appeal on behalf of my client, Lt. Col. Joseph Bunecke (USAF, Ret.). In the meantime, I have received documentation (attached) from an organization, Protect Our Defenders (POD), that was highly responsive to my original FOIA request, but was NOT included in the materials provided by USAFA. This establishes that the USAFA response was incomplete, and that additional efforts need to be undertaken to comply with my request. This “oversight” is all the more serious since the information omitted from the FOIA production to me was in the custody of the USAFA Superintendent’s office, and the Superintendent was specifically asked by your office to provide documents responsive to my request. This was not done, and indicates that other equally responsive documents also exist, but have not been produced. For example, and as reported in the Sunday edition of the Colorado Springs Gazette (November 26, 2017, at page 1), the Air Force Academy recently investigated and produced a highly critical 560 page report regarding the performance of its Sexual Assault Prevention and Response Office, and yet there is no mention of this important document in the information provided in response to Lt. Col. Bunecke’s FOIA request.

Specifically, General Johnson’s response substantiates the existence of correspondence with SECDEF, SECAF, and CSAF regarding the subject matter of my client’s FOIA appeal. Needless to say, there was also email traffic between those offices and the Superintendent, as well as the Superintendent and the Board of Visitors (BOV) (since each Board member received this correspondence which was discussed at one or more BOV meetings). She also mentions that both the USAFA and AF IG offices had reviewed the case, so there would also be communications between those offices and the Superintendent as well. Since General Johnson most certainly did not draft the full response to POD, there are also communications between numerous USAFA and Air Force agencies during the tasking, drafting, coordination, review and comment stages of the process. Finally, bullet point 6 of Attachment 3 in Gen Johnson’s reply

**Holland & Hart LLP Attorneys at Law**

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Alaska Colorado Idaho Montana Nevada New Mexico Utah Washington, D.C. Wyoming



November 27, 2017  
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states that AOC's receive 400 contact hours during their Master's program taught by UCCS and the Department of Behavioral Sciences, which indicates the existence of a syllabus. As you know, no syllabus was produced in response to Lt. Col. Bunecke's FOIA request.

At this point, I respectfully request that this letter and attachment be added to my FOIA appeal and processed by your office. If your office is collecting additional responsive documentation, then I request that you specifically search for documentation related to the POD letter and USAFA's response, as well as the investigation referenced in the Colorado Springs Gazette article mentioned above. This documentation was included within the ambit of Lt Col Bunecke's original FOIA request, and needs to be provided as required by the FOIA and relevant DOD and Air Force instructions.

Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads 'Charles R. Lucy'.

Enclosures

cc: USAFA/JA (via email only)

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**DEPARTMENT OF THE AIR FORCE**  
**HEADQUARTERS UNITED STATES AIR FORCE ACADEMY**

**-5 AUG 2014**

MEMORANDUM FOR USAFA BOARD OF VISITORS CHAIR

FROM: HQ USAFA/CC  
2304 Cadet Drive, Suite 3300  
USAF Academy CO 80840-5001

SUBJECT: Response to Letter Referencing Sexual Assault (SA) Climate at United States Air Force Academy (USAFA)

1. My priority for USAFA is to create a climate of respect where there is no place for sexual assault, where victims are comfortable reporting and well-supported once they report. You received a letter from Ms. Nancy Parrish, president of Protect our Defenders, dated 4 April 2014 (Atch 2), levying allegations regarding USAFA's climate for victims of sexual assault. I take these concerns very seriously but believe that you should be aware of additional context specific to the letter's assertions.

2. The letter contains allegations very similar in content and text to those received by the USAFA Inspector General (IG) early in Feb 2014 as well as issues raised in a letter sent to OSD and numerous other public officials during the March 2014 time frame. The first allegations were raised by a father following his daughter's unrestricted report as a cadet who is now a second lieutenant in the Air Force. The second set, those addressed to OSD and others, were sent anonymously. It is important to note that USAFA IG, after lengthy review each time that involved several offices, did not substantiate any of these allegations. During the initial review, the victim herself expressed complete trust in USAFA's sexual assault processes. The Air Force IG reviewed and concurred with the USAFA IG's conclusions. After this effort in response to the original letters and numerous recent external process reviews by various external organizations, I conclude there is no merit to the allegations raised by Ms. Parrish. Our Sexual Assault Prevention and Response (SAPR) office and leadership oversee a process to ensure victims receive the support and care they deserve.

3. The DoD's Annual Report on Sexual Harassment and Violence at the Military Service Academies more accurately characterizes the environment for sexual assault victims at USAFA. USAFA recently reviewed SAPR-related processes and also conducts Superintendent-led monthly reviews of all sexual assault cases. This oversight, together with OSD SAPRO evaluations, Defense Advisory Committee on Women in the Service (DACOWITS), Under Secretary of Defense for Personnel and Readiness (USO (P&R)), Defense manpower Data Center (DMDC) cadet focus groups and recent victim communications with the SARC all portray a positive and supportive climate for victims. Constant steps are taken here to improve the climate of respect and ensure vigilance against sexual and gender-related violence. In addition to our curriculum of training and education in these areas, several recent examples include:

- Respect and Character Enrichment (RACE) campaign emanating from the Athletic Department that will promote and encourage a climate of genuine mutual respect.
- "SAFE-Zone" training delivered to incoming commanders, emphasizing leadership's role in creating a welcoming, secure environment in the wake of DoD's Don't Ask Don't Tell policy (DADT).

- CADET Athletes Against Sexual Violence (CAASV) video production-Student Athlete Advisory Committee (SAAC) teamed up with CAASV and SAPR office to produce a hard-hitting organic video that demands an end to sexual violence (<https://www.youtube.com/watch?VYzv6gsCgnE>).
- Delivered "Mentors in Violence Prevention" training program that focuses cadets' awareness on how to preempt gender violence--delivered to the USAFA football team and other cadet athletes (120 cadets in total) along with select coaches and staff.
- Random Acts of Kindness Program-recognizes and rewards those individuals "caught" performing positive cultural acts of kindness and respect toward others.
- Created robust Cadet Bystander Training program delivered to 1000 sophomore cadets in small-group seminars; offers concepts and skills that prompt personal intervention to preempt sexual violence.
- Collaborated with regional colleges and universities for annual Sexual Assault Awareness Month (SAAM) including small-group seminars and activities that addressed healthy social practices and a major "Take Back the Night" event that highlighted the dangers of gender-related violence for over 3500 personnel-recognized publically as one of only ten national "points of light" institutions by the International Take Back the Night Foundation.
- Held "Start the Conversation"-the first in a series of public forums with cadet, staff and faculty participation on subjects of social relevance to USAFA personnel; first event featured cadet presentations and public discussion that addressed the status of inclusion and diversity in the cadet dormitories and also gender-related differentiation within USAFA's material culture.

4. We are making every effort to eradicate sexual assault, remain transparent in the effort, and strive for continuous process and climate improvement. I have attached a document that answers Ms. Parrish's allegations directly, noting the substantive processes in place to prevent the very sort of conditions that she alleges (Atch 3). I take such concerns very seriously, but feel very strongly that this set of allegations has been reviewed and answered previously in various forms. While I consider the specific case and inquiry closed, we remain vigilant and are prepared to further investigate if more specific information becomes available.



MICHELLE D. JOHNSON  
Lieutenant General, USAF  
Superintendent

3 Attachments:

1. Alfredo Sandoval Letter (2 June 2014)
2. Nancy Parrish Letter (4 April 2014)
3. USAFA Responses

cc: Protect Our Defenders



**UNITED STATES AIR FORCE ACADEMY  
BOARD OF VISITORS**  
WASHINGTON, DC 20330

XX April 2014

Ms Nancy Parrish  
President, Protect Our Defenders  
110 Maryland Avenue, NE, Suite 50  
Washington, D.C. 20002

Dear Ms Parrish,

I am contacting you on behalf of the United States Air Force Academy Board of Visitors (BOV) in response to your letter of April 4, 2014 to me and the Board regarding sexual assault at the Air Force Academy. Please know the Board takes these matters very seriously.

First, thank you for articulating your issues. It is often through the thoughtful efforts of concerned citizens such as yourself that we learn of the existence, scope, and magnitude of issues, and the depth and sincerity of emotions engendered by them. For that, we thank you, and we assure you we will take your concerns to the Air Force Academy Superintendent for her to consider and fully address with her staff.

It is no secret that the issue of sexual assault in the military and the processes for dealing with these matters have great urgency with our Nation's military leadership in general, and the Air Force Academy in particular. In these matters, we pursue our BOV responsibility as observers, evaluators, advisors, and reporters to the Secretary of the Air Force, our conduit to the Secretary of Defense. However, since the BOV is established as an oversight board by Title 10 United States Code, the Board does not function in the chain of command and therefore cannot direct command action. For the issue at hand, however, you may rest assured that we will ensure Academy Superintendent, Lieutenant General Michelle Johnson is promptly and personally made aware of the specific concerns as outlined in your letter.

The BOV will also carefully monitor the situation and render periodic reports to the Secretary of the Air Force. However, for the sake of propriety and discretion, we cannot specifically respond to your concerns; this role properly falls within the purview of the military's senior civilian leadership.

With sincerity and appreciation,

Alfredo Sandoval  
BOV Chair



UNITED STATES AIR FORCE ACADEMY  
BOARD OF VISITORS  
WASHINGTON, DC 20330

2 June 2014

Lt Gen Michelle Johnson  
United States Air Force Academy  
Harmon Hall  
Colorado Springs CO 80840

Dear Lt Gen Johnson,

Attached hereto is a copy of a letter from Ms. Nancy Parrish, President of *Protect Our Defenders*, to the Board of Visitors dated April 4, 2014, which expresses the grave concerns of her organization over (1) incidents of sexual assault at the Air Force Academy, and (2) the processes by which allegations of sexual assault are investigated and adjudicated. Her letter speaks for itself. My colleagues of the BOV have asked me to apprise you of the letter and its content to assist you in being up-to-date on all issues and activities ensuing as these matters are resolved.

As a general observation., we continue to have full confidence in the measures you are taking to address all parameters of the sexual assault problems. As time proceeds and you become more familiar with the nature and extent of these problems, we will continue to stand ready with you to inform and advise. Also, we will stay vigilant and accessible (should other parties wish to express their ideas), and we will monitor the situation regularly until the problems are eliminated.

Thank you and best wishes,

  
Alfredo Sandoval  
BOV Chair

Enclosures

1. BOV Response to Nancy Parrish
2. Nancy Parrish Letter

## Protect Our Defenders

—, Our Military. A—Support Our Veterans.

April 4, 2014

Alfredo Sandoval  
Chair, United States Air Force Academy Board of Visitors  
901 E Tahquitz Canyon Way, Suite C201  
Palm Springs, CA 92262-6762

Dear Mr. Sandoval and Members of the Board,

Last year, Congress created a Response Systems Panel to assess the adequacy of systems in place to protect and support victims of military sexual assault through all phases- from reporting through disposition of their case. Last November, I spoke before this panel to highlight the broken military justice system and to provide recommendations for reform. Due to time constraints, I was unable to include all of the comments submitted to Protect Our Defenders. One omitted submission in particular has taken on greater significance after the release of the DoD Annual Report on Sexual Violence and Harassment at the Military Service Academies for Academic Year 2012-2013. One of the highlights of that report was the fact that reported incidents at the United States Air Force Academy (USAFA) were more than double the number of reports at each of the other Academies. The Report concluded that the elevated number of sexual assault reports at USAFA was in part, due to "a greater level of confidence in the response system." This assertion has no basis in fact and our experience working with victims and their families dispute this assertion.

After enduring trauma by the system designed to protect them, victims have told us that they get in trouble for suggesting to other victims that they not come forward due to harassment, disbelief, and retaliation. This is a tragic circumstance. Victims lose and so does the Academy. In addition, we have had the opportunity to work with the author of the Public Comment included below, who has first hand knowledge of the broken system victims face at the academy when reporting the crime.

This source's evidence is credible, knowledgeable, and they sincerely want to be a part of the solution to ending sexual assault at the Academy.

In your capacity as a member of the USAFA Board of Visitors, I request you hold the Academy accountable for addressing the existing flaws in its sexual assault reporting system. The Public Comment submitted to Protect Our Defenders follows in its entirety.

"I am a graduate of the Air Force Academy and a former member of the Academy staff. I am choosing to remain anonymous because I fear my comments in this forum will adversely affect my career since they do not meet the criteria to attain Whistleblower status. That statement alone speaks volumes about the culture that exists at the Academy. I am intimately familiar with DoD Instruction 6495.02 - the regulation governing sexual assault case management, and I have first-hand knowledge concerning its implementation at USAFA. My allegations lack specific details to protect the identity of victims. I am not a disgruntled employee. I have no axe to grind. I have glowing performance reports. I am a professional. I have been taught to do my duty - no matter how distasteful it may be. I am duty-bound to act in the best interests of the Air Force and the Air Force Academy. That is why I have submitted the following comments concerning the existing climate for victims who report sexual assault at the Air Force Academy. I am doing my duty in the hope that it will begin a process of change to rid the Academy of the scourge of sexual assault.

Once a victim files an Unrestricted Sexual Assault Report, it quickly becomes common knowledge throughout the Cadet Wing. Victims have no expectation of privacy. The squadron chain of command [Air Officer Commanding (AOC) and Academy Military Training Non Commissioned Officers (AMT)] routinely shares case details with other cadets who do not have a "need to know." Within a short time, the victim is marginalized and must endure that onerous climate for the remainder of their cadet careers. The identity of victims becomes common knowledge in the Wing and other cadets observe the treatment they receive at the hands of their chain of command. The subsequent rampant spread of case management details (whether accurate or inaccurate) is one of the most significant barriers to eliminating sexual assault at the Academy. I believe numerous assaults are not reported because victims feel the "system" will re-traumatize them.

Victims routinely come in contact with, and have been threatened by their attackers after filing Unrestricted Reports. Other than issuing a meaningless "No Contact" order, the Academy chain of command does nothing to prevent this. DoD Instruction 6495.02 contains a provision allowing a victim to request a transfer. Since such a transfer would mean that either the attacker or the victim would have to leave the Academy, the chain of command essentially ignores this clause. Attackers remain in the same squadrons and sometimes even in the same academic classes as their victims. There is minimal AOC/AMT presence after duty hours and victims are particularly vulnerable to threats and intimidation at night.

There are numerous barriers to the flow of information between AOCs and AMTs, who interact with victims directly, and the Academy Response Team (ART), which is responsible for case management decisions. AOCs and AMTs carry out their duties with the perception that senior leadership uses their squadron's performance as input for their annual performance reports. Therefore, they are reluctant to convey information up the chain of command which portrays their squadron, and hence themselves, poorly. Even when information concerning sexual assault cases flows freely, it is highly probable that it will be inaccurate or incomplete. AOCs and AMTs are not counselors or psychologists and are ill-equipped and insufficiently trained to perceive and respond to the real, and often times unspoken needs of sexual assault victims. The training they do receive is viewed by most as just "filling the square" and the Master's program, while well intentioned, has thus far been ineffective. Yet despite these woefully lacking qualifications, AOCs and AMTs are the default managers of sexual assault cases due to the ART's infrequent meeting schedule and the tendency to "rubber stamp" an AOC's decision without question or further investigation. The Academy's Sexual Assault Response and Prevention (SAPR) program continues to receive high marks during Inspector General and DOD level inspections because it does an adequate job with the information it does receive. The program looks good on paper. However, these assessment grades mask the frustration and trauma that sexual assault victims experience because the details and concerns they convey to their commanders are often forwarded inaccurately, incompletely, or not forwarded at all.

The link between the Family Advocacy Program (FAP) and the Academy's SAPR office mandated by DoD Instruction 6496.02 is broken. Since domestic abuse or abuse in a dating relationship reported to the FAP is often separated in time from the report of a sexual assault, evidence that an assailant has been accused of domestic violence is rarely considered by the ART. The functionality of the FAP-SAPR link is critical because partners, who are victims of sexual as well as physical abuse in a domestic or dating relationship, live with a much higher risk of violent retaliation for their report of sexual assault. Due to these communication failures, prudent and sufficient safeguards are not put in place and sexual

assault victims are forced to meet the Academy's demanding standards while living in constant fear of harm or other retaliation.

An obvious bias exists in favor of protecting the attacker. Counter accusations they make in their defense are acted upon immediately, sometimes even resulting in the punishment of their victim. DoD Instruction 6495.02 gives the chain of command discretion in the handling of collateral misconduct by victims. This discretion is exercised inconsistently or not at all. Regardless of their stature in the Cadet Wing - Superintendent's List, Dean's List, Intercollegiate team captain - whenever a victim voices concerns to their chain of command, fears are minimized, facts are disputed, and credible evidence is often summarily dismissed. In almost all instances, this results in a marked decrease in victim cooperation as the case proceeds.

One method used to get rid of the problem rather than dealing with it in sexual assault cases, as well as disciplinary cases, is for an AOC to order a cadet to undergo a psychological evaluation. The rationale is to use an unfavorable diagnosis to classify a cadet unfit for duty thus providing evidence to initiate and support dismissal proceedings. Instead of supporting a victim through an extremely trying ordeal, the Academy tries to get rid of the problem.

In order to put an end to sexual assault crimes at the Academy, potential perpetrators must know that all credible instances of sexual assault will be reported and fully prosecuted. Victims must be able to trust their chain of command to maintain their privacy, to protect them from unwanted contact with their attackers, and to unwaveringly adhere to the applicable case management procedures. These conditions do not currently exist at the Air Force Academy. I have chosen this forum to voice my concerns to increase the probability that my message would reach senior leadership and prompt quick and decisive action, while still protecting the privacy of all concerned. My sincere hope is that Lieutenant General Johnson, the new Superintendent, will use the information I've provided to specifically target the areas, which, I believe, will lead to the greatest overall improvement in the shortest amount of time. I stand ready to be a part of that effort."

Protect Our Defenders strongly believes that all men and women who sign up to protect our country should be afforded the same blind system of justice they have pledged their lives to protect. These brave survivors of sexual assault deserve to serve in a military free of fear, intimidation, and retaliation. This source has given the Academy a unique opportunity to listen, learn, and fix glaring flaws. Our hope is that you will insure that the Academy takes full advantage of this gift. Failure to do so will bring dishonor to the institution and to the Air Force.

Thank you in advance for your efforts to insure that no other victims of sexual assault at the Air Force Academy will be traumatized by the system charged with their protection.

Sincerely,

*ff/.Z-* \_

Nancy Parrish,  
President

ATTACHMENT 3:

Specific Replies to Assertions in Protect our Defenders (POD) Letter (4 Apr 2014)

1. POD Assertion: *"Once a victim files an Unrestricted Sexual Assault Report, it quickly becomes common knowledge throughout the Cadet Wing .... The squadron chain of command [Air Officer Commanding {AOC} and Academy Military Training Non Commissioned Officers (AMT)] routinely share case details with other cadets who do not have a 'need to know'" ....*

USAFA Discussion: The chain of command is educated on the nature of privacy act information and the consequences for failure to exercise due diligence in its safeguard. Furthermore, AOC/AMT education and training emphasizes the importance of victim care and the demand for privacy. If information or rumors are disseminated through the Cadet Wing, they grow from assumptive information originating with cadets themselves or appearing in media that may or may not be true in part or in whole. The chain of command and SAPR office cannot control this sort of action or its deleterious effects. Great pains are taken to preempt such actions by reminding cadets, staff and faculty during public judicial cases that the UCMJ process represents the governance of federal law and that public discussion of such cases is inappropriate, hurtful and not productive.

2. POD Assertion: *"Victims routinely come in contact with, and have been threatened by their attackers after filing Unrestricted Reports. Other than issuing a meaningless 'No Contact' order, the Academy chain of command does nothing to prevent this .... Attackers remain in the same squadrons and sometimes even in the same academic classes as their victims."*

USAFA Discussion: Once there is a restricted or unrestricted sexual assault case opened with both a cadet victim and alleged perpetrator, the Commandant of Cadets takes deliberate



actions to move one or the other physically to address the potential physical or emotional threat. This is not only true of living conditions (e.g., moving one or the other to another squadron or dormitory not within physical proximity) but also of academic classrooms, physical education, intramural sporting events and other cadet activities. No Contact orders are not "meaningless" as asserted, but instead are an actionable instrument of military command authority. The willful breach of a No Contact order is a compounding offense that may result in further non-judicial remedies against the offender and can, in extreme cases, even result in pre-trial confinement-an action that has been taken at USAFA in the past to effect good order and ensure the safety of a victim.

3. POD Assertion: *"There is minimal AOC/AM T presence after duty hours ...."*

USAFA Discussion: AOCs and AMTs often work together to ensure physical presence in the squadron after duty hours on both a scheduled and unscheduled basis. The cadet chain of command maintains a responsible presence in their absence. All cadets are able to reach the AOC and/or AMT at any time of the day or night by cellular telephone. Additionally, there is law enforcement patrol presence in the dormitory areas and available 9-1-1 support throughout the Cadet Area 24-hours a day in the case of any kind of physical threat to an individual's well-being. There is no reasonable need for 24-hour AOC/AMT presence in the dormitories based on historical evidence.

4. *"There are numerous barriers to the flow of information between AOCs and AM Ts, who interact with victims directly, and the Academy Response Team (ART), which is responsible for case management decisions."*

The Case Management Group (CMG), organized and named as directed by MG DOD 6495.02 and AFI 36-6001, meets at least monthly or more often as needed. This body was formerly known colloquially as the Academy Response Team. The CMG is chaired by the USAFA Superintendent personally and the Director of Culture, Climate and Diversity (CCD), the Vice Commandant for Culture and Climate (CWP) and the SARC are among the other members who attend this meeting and participate in oversight. There are in fact no "barriers" to information flow between the CMG and the AOC/AMT team responsible for individual restricted and unrestricted cases. The AOC and/or AMT for each and every open SAPR case meets in person with the CMG on a monthly basis (or more often if the circumstance dictates) to discuss case progress, victim and alleged perpetrator condition and circumstances, and steps taken to ensure the rights, privacy and well-being of both. Additionally, for each case, the CMG hears the professional opinions of medical, mental health and counseling professionals in attendance with knowledge of the case. USAF OSI and USAFA JA representatives also update the CMG on each case status in the investigation and judicial system and/or relate relevant information on case progression in the civil justice system if applicable. Information flow during this face-to-face discussion of each case in a private, candid environment is unimpeded and includes those directly and indirectly responsible for victim care and case oversight.

5. POD Assertion: *"AOCs and AMTs carry out their duties with the perception that senior leadership uses their squadron's performance as input for their annual performance reports. Therefore they are reluctant to convey information up the chain of command which portrays their squadron, and hence themselves, poorly."*

USAFA Discussion: AOC and AMTs are almost constantly reminded that their performance is evaluated on how they go about resolving issues in a timely, reasonable fashion for the good of the Cadet Wing's development as officers of character. Cadet squadron rankings are the result of indexed achievement profiles in a variety of measures (cumulative GPA, athletic competition, community service, etc) and while mention of a very high ranking may indeed make it onto an annual performance report, it is common knowledge that these are less than meaningful reflections of an AOC/AMT team's own leadership performance. In fact, the AOC/AMT team who successfully handle a variety of challenges in their squadron are those who often receive the strongest remarks on performance reports-it is the conduct of their assigned roles as commanders and NCOs that is reflected in the report. Cadet Squadron rankings are simply a tool to help USAFA impart a positive element of friendly competition among the cadet squadrons throughout the year-not a benchmark for leadership performance.

6. POD Assertion: *"AOCs and AM Ts are not counselors or psychologists and are ill-equipped and insufficiently trained to perceive and respond to the real, and often times unspoken needs of sexual assault victims."*

USAFA Discussion: Each selected AOC cohort attends an intensive one-year (three semesters), 45-credit hour accredited master's degree program in Counseling and Leadership prior to assuming command of his/her squadron. This program is administered and taught in a collaborative degree-granting effort by the Dept of Counseling and Human Services of University of Colorado, Colorado Springs (UCCS) and the Dept of Behavioral Science and Leadership (DFBL) at USAFA. Counseling is taught both from a theoretical perspective as well as in the laboratory setting in both individual counseling and group counseling frameworks. The

program's curriculum includes 400 contact hours in counseling and leadership field work. The curriculum includes assignments and presentations in the theory and programs associated with sexual assault prevention and response from the counseling perspective. Additionally, the cohort receives specific information on the USAFA SAPR processes and victim/offender care and support and the application of the concept of "collateral misconduct" within the Cadet Discipline System (CDS) and under the UCMJ.

*7. POD Assertion: The link between the Family Advocacy Program (FAP) and the Academy's SAPR office mandated by DoD Instruction 6496.02 is broken.*

USAFA Discussion: The SARC and FAP offices have a very clear and open line of communication to ensure timely response by the appropriately trained agency. If an individual seeking FAP services (for defined reasons other than sexual assault) brought to light that a sexual assault had taken place within a domestic relationship, it is conceivable that there would be a delay in the reporting and services provided, but this would be a delay created by the victim not by the system. Assaults that occur within the context of a relationship are handled by FAP. Sexual assault cases that take place within abusive relationships require an additional level of knowledgeable services and expert responses not available to the SARC. It is the assertion of the FAP and SAPR offices at USAFA that there is no "communication failure" between the two entities. Both offices have AFIs that guide programs and clearly delineate lines of responsibility for sexual assaults that occur within a relationship.

For the cadet circumstance, of applicable note from the AFI "Triage Guidelines" is that any non-consensual sexual behavior that occurs between partners who have been in a dating relationship for over 30 days will fall under the FAP process. If partners meet this criterion,

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their case is reported to and managed by FAP and would be reviewed by FAP's Case Review Board (CRB) rather than the SAPR program's CMG. Depending on the 'entry' point of a report (FAP or SAPR) the report would be "triaged" and if necessary a timely referral to one or the other office would be made. The USAFA SAPR and FAP offices meet regularly to insure quality and continuity of service, and to make sure training regarding intimate partner sexual assault definition and reporting to the appropriate program is clear.

8. POD Assertion: *"An obvious bias exists in favor of protecting the attacker. Counter accusations they make in their defense are acted upon immediately, sometimes even resulting in the punishment of their victim ...."*

USAFA Discussion: The chain of command objectively pursues the care and oversight of both the victim and alleged offender as required by their assigned role and responsibility. The investigative and judicial processes are fulfilled by OSI, JA, and ADC within the service policies, regulations and federal law on which both are founded. The chain of command is not "biased" in favor of either victim or alleged offender but simply interested in promoting and ensuring the well-being of both as charges of their leadership and responsibility. Care, support and emotional recovery of the victim remain a primary interest of the SAPR program and the chain of command while ensuring due process is upheld under the UCMJ.

9. POD Assertion: *"One method used to get rid of the program rather than dealing with it in sexual assault cases, as well as disciplinary cases, is for an AOC to order a cadet to undergo a psychological evaluation and demand the victim consent to the release of the results to the chain of command ...."*

USAFA Discussion: In accordance with DoDD 6490.1, *Mental Health Evaluations of Members of the Armed Forces*, as supplement to DoDI 6090.4, *Requirements for Mental Health Evaluations of Members of the Armed Forces* and Air Force Instruction 44-109; *Mental Health, Confidentiality, And Military Law*, section 4.1 "only a member's commander may direct the member to undergo a mental health evaluation ..." The AFI outlines required checks and balances between the Judge Advocate, the Commander and the Mental Health provider who is being requested to conduct a Command Directed Evaluation (CDE). At no point is an AOC able to demand that a victim(s) consent to release the results of a lawful CDE. If a disqualifying mental health diagnosis is identified in the course of a CDE, the use of a medical evaluation board (MEB) is initiated and the member is provided due process in regards to potential medical discharge/separation. It should be noted that if a member is found to have had prior mental health issues (which were not reported upon accession into the Air Force) there will be required legal review to determine whether the member has committed fraudulent entry into service. Regardless of CDE findings, it is ethically paramount for a mental health provider to support a member through extremely trying ordeals. If a member chooses to not accept offers of mental health services following a CDE, it is the member's right to self-determination.